

**INDIANA DEPARTMENT OF NATURAL RESOURCES
LAW ENFORCEMENT DIVISION**

MEMORANDUM

DATE: 5-30-08

TO: Director Carter

FROM: Major Felix Hensley

SUBJECT: Recommendation on Laughery Creek Petition 07-216L

APPROVED BY: _____

The Division of Hearings received a "Citizens Request for Rule Change" dated 9-28-07 from Mr. Grover Sefton of 9608 Holmes Hill Road, Aurora Indiana. Mr. Sefton expressed his concern on what he felt were hazardous conditions on a portion of Laughery Creek. Mr. Sefton stated boating safety and hazardous watercraft operations and serious shoreline erosion as the motivating factors of the petition. He was seeking to amend 312 IAC 5-7-10 to alleviate the problems he described in his petition.

Currently, 312 IAC 5-7-10 establishes two idle zones on Laughery Creek upstream from the confluence with the Ohio River. Mr. Sefton owns property that borders Laughery Creek between the two idle zones. There is no speed limit or water skiing prohibition for the section of waterway between the idle zones.

Mr. Sefton states he has personally observed fast moving boats pulling skiers nearly collide with anchored fishing boats or slower moving boats on the waterway. He further states that on occasion people have almost been ejected from their boats due to the high rolling wakes created by some of the ski boats.

Mr. Sefton states the landowners along this portion of Laughery Creek have been forced to pay a terrible price for this high speed boat operation due to excessive shoreline erosion. Mr Sefton advised he had lost several feet of his property and trees to severe erosion caused by high speed boat operation and skiing on the narrow waterway.

On 1-23-08 Jim Hebenstreit, with the Division of Water, Brian Schoenung, with Division of Fish and Wildlife along with Major Felix Hensley of the Law Enforcement Division were appointed by the Department of Natural Resources Director to a committee to review the facts of the

AGENDA ITEM #13

petition and make a recommendation as to whether approval or denial of the petition should be made. Major Hensley was named as chairman of the committee.

Major Hensley contacted Mr. Sefton and made arrangements to meet with him to observe the property damage and tour Laughery Creek as soon as the weather was suitable for boat travel. On 5-1-08 Major Hensley met Corporal Steve Kinne, with plans to tour the area by boat and photograph areas affected by excessive erosion.

Officers launched the boat a few miles upstream of the area described in the petition. Major Hensley wanted to compare the erosion upstream to the erosion in the area between the current idle zones, where the petitioner's property is located.

The officers noticed what they felt was normal shoreline erosion for a tributary to the Ohio River as they headed downstream from their launching point. The first idle zone officers came to was located approx. 16,500 feet upstream from the confluence of Laughery Creek and the Ohio River at Holiday Hills Marina. Officers observed Mr. Terry Ware of 3800 Woodbine, Cincinnati Ohio working on a shelter house just downstream from the idle zone in the high speed area described in the petition. Major Hensley explained why officers were in the area and asked Mr. Ware what his observations were as far as hazardous boat operation and excessive erosion. He advised he had witnessed boaters pulling skiers near docks and dangerously close to the shoreline. Mr. Ware stated that he could not believe someone had not been killed or injured yet as there are numerous tree stumps and other debris in the water. He stated it was not uncommon at all for boats to pull skiers just a few feet from the shoreline in shallow water causing tremendous damage to the shoreline.

As officers traveled downstream in the area described in the petition between the two idle zones, Major Hensley photographed some of the erosion damage. Both, Major Hensley and Corporal Steve Kinne noticed a drastic increase of the erosion damage with the shoreline falling in and trees uprooted very frequently. Officers also had several opportunities to observe the wakes created by fishing boats as they traveled through the area at higher speeds. Officers noticed and photographed tree stumps above the surface of the water in the middle of the waterway as well as they continued downstream.

Major Hensley and Corporal Kinne timed the travel time from the downstream idle zone located at Lighthouse Marina to the second idle zone located upstream at Holiday Hills Marina. The travel time in a johnboat took officers approx. 15 minutes at idle speed.

On 5-2-08 at approx. 8am Major Hensley met with Mr. Sefton and went to his property located at 3604 Hartford Pike Aurora In. 47001. This is the property along Laughery Creek located between the two idle zones. Mr. Sefton showed Major Hensley numerous areas on his property where the shoreline had cut several feet inland from the waterway. He also pointed out numerous trees that were ready to be uprooted and fall into the creek.

AGENDA ITEM #13

Mr Sefton relayed several stories of asking boaters to slow down and being cursed at as a result. He stated that on any given weekend anyone could stand on his property and observe boats pulling skiers within just a few feet of the shoreline in very shallow water.

Major Hensley advised Mr. Sefton that he agreed there was a problem and he (Hensley) would speak with the area commanders and try to help resolve the issue.

Major Hensley has spoken with Lt. Tony Stoll and Corporal Steve Kinne about possible resolutions to this problem and all three are in agreement, there is a problem, property owners between the idle zones are suffering undo loss.

The committee consisting of Brian Schoenung, Jim Hebenstreit and Major Hensley have reviewed the information and facts pertaining to the petition. They offer the following as a recommendation to remedy the issues described in the petition; Administrative Cause 07-216L.

Amend 312-5-7-10 to state:

Sec. 10. A person must not operate a watercraft in excess of idle speed on Laughery Creek in Dearborn and Ohio County within the following zone;

1. Beginning at the confluence of Laughery Creek and the Ohio River and continuing upstream for a distance of 16,500 feet to a point at UTM Northing 43203227 and UTM Easting 680037.

Creating one idle zone will only increase the time boaters spend traversing the area approx. 15 minutes, but will help preserve the property owner's shoreline and create a safer environment for recreational boaters and sportsmen.

The statements made by the petitioner regarding the safety hazards of skiing in the area have validity. Major Hensley observed numerous stumps along with other debris under the surface of the water that could be devastating if hit by a skier or tuber.

Included with this recommendation are photos of the area.

Respectfully Submitted,

Major Felix Hensley

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #08-

DIGEST

Amends 312 IAC 5-7-10 to establish a revised idle zone on Laughery Creek in Dearborn and Ohio Counties. Effective 30 days after filing with the Publisher.

312 IAC 5-7-10

SECTION 1. 312 IAC 5-7-10 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-7-10 Ohio River embayments and tributaries; Laughery Creek in Dearborn County and Ohio County; watercraft speed zones

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 10. A person must not operate a watercraft in excess of idle speed on Laughery Creek in Dearborn County and Ohio County within ~~either~~ of the following zones:

(1) Beginning at ~~Old State Road 56 then downstream to~~ the confluence of the Ohio River and Laughery Creek **and continuing upstream for a distance of 16,500 feet to a point at UTM Northing 43203227 and UTM Easting 680037.**

(2) ~~Beginning sixteen thousand five hundred (16,500) feet upstream of the confluence of the Ohio River and Laughery Creek then downstream to the western boundary of section 9, township 4 north, range 1 west.~~

(Natural Resources Commission; 312 IAC 5-7-10; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2376, eff Jan 1, 2002; readopted filed May 29, 2008, 1:53 p.m.: 20080625-IR-312080057RFA)